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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,955	02/20/2002	Robert Swift	3728-0103P	3035

2292 7590 07/27/2006

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EXAMINER

CHIN, PAUL T

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 07/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/077,955

Applicant(s)

SWIFT ET AL.

Examiner

PAUL T. CHIN

Art Unit

3652

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 May 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-3, 5, 7-12, 21, 22 and 24-26.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.


EILEEN D. LILLIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

Steltz's device (3,709,389) is capable of being "used remotely operated while being suspended from a crane". Also note that applicant recites, "a hydraulic device that is sized and constructed to be conventionally used". If this is the case, the applicant is admitting that the "device" is "conventionally used" and not a new invention.

Applicant also argues that "Steltz's doors 13 are provided to enclose opening 12, through which refuse is introduced into the container 1, and are manually openable and closable" (last paragraph of page 4). The examiner agrees that doors (13,43) are manually operable. Applicant further argues that "the only element operated by hydraulic pressure in Steltz is the pivotable compactor 23, which is not a door". The argument is not persuasive. Applicant recites in claim 1, line 8, "at least a first member connected to the body portion", and in the last three lines, "wherein the hydraulic device is a hydraulic dumpster, the first member is a door, and the cylinder is pressured to open the door". Steltz's device describes on column 4, lines 23-29, "to provide access to the cylinder units 30, the top wall 5 is provided with an opening located in alignment with the cylinder units and which is normally closed by an access door 38. The forward edge of door 38 is hinged to the top wall 5 by hinge 39 and the free end of the door rest on the angle 33,..." Figure 1 shows a pair of cylinders (31,31) being adapted to pivot a pivotable compactor 23 having a curved plate (24) which is supported by a pair of spaced vertical plates (25,25) (see Col. 3, lines 38-51). Note that the curved plate (24) and the vertical plates (25,25) can be considered as a swinging door applied by a pair of hydraulic cylinders. It is pointed out that applicant only recites that "the first member is a door" and "the cylinder is pressured to open the door" and does not clearly define the location of the door. Therefore, Steltz's device meets the recited claims.

Claims 5 and 11 are rejected under 35 USC 103(a) as unpatentable over Steltz (3,709,389) in view of Bound (Re. 36,685). Applicant argues that the rejection is unclear because it is said to be based on Wad and Bounds. Because of typo error, claims 5 and 11 are rejected as unpatentable over Steltz (3,709,389) in view of Bound (Re. 36,685). The examiner clearly states on page 4, line 1, "Steltz (3,709,389), as presented above," in the Final Office action.